

PUBLIC LAW BOARD NO. 3241

In the Matter of:)	National Mediation Board
)	Administrator
)	
BROTHERHOOD OF MAINTENANCE OF)	
WAY EMPLOYES,)	
)	
Organization,)	
and)	
)	
UNION PACIFIC RAILROAD)	Case No. 55
COMPANY,)	Award No. 55
)	
Carrier.)	
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Hearing Date: March 9, 1994
Hearing Location: Sacramento, California
Date of Award: March 2, 1995

MEMBERS OF THE BOARD

Employees' Member: C. F. Foose
Carrier Member: D. A. Ring
Neutral Member: John B. LaRocco

ORGANIZATION'S STATEMENT OF THE CLAIM

1. That the Carrier violated the current Agreement when it dismissed B&B Foreman D. L. Owens. Said action being excessive, unduly harsh and in abuse of discretion.
2. That the Carrier reinstate Claimant to his former Carrier position with seniority and all other rights restored unimpaired with pay for all loss of earnings suffered, and his record cleared of all charges. (Carrier File No. 930452)

OPINION OF THE BOARD

This Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act as amended; that this Board has jurisdiction over the parties and the subject matter of the dispute herein; that this Board is duly constituted by an Agreement dated July 23, 1982; and that all parties were given due notice of the hearing held on this matter.

On July 24, 1990, the Carrier and the Organization entered into an amendment to Rule 20 which pertains to disciplinary investigations. The second and third paragraphs of the July 24, 1990 letter agreement reads as follows:

This will confirm our understanding that to terminate the employment of an employee who is absent from work without authority, the Company shall address such employee in writing to his last known address, by registered or certified mail, return receipt requested, with copy to the General Chairman, notifying the employee that their seniority and employment relationship has been voluntarily terminated due to being absent without proper authority.

However, the employee may within thirty (30) days, request that an investigation be held in accordance with Rule 20 of the Agreement. [Company Exhibit A-1]

On Monday, January 18, 1993, the Carrier served Claimant, a Bridge Foreman, with notice that he had been absent without authority since January 11, 1993 and thus, his seniority and employment relationship was being voluntarily terminated.

Claimant immediately requested a Rule 20 investigation. The Carrier properly granted the request. The investigation was held on January 25, 1993. Subsequent to the investigation, the Carrier dismissed Claimant from service for being absent without authority.

At the investigation, the Manager of Bridge Maintenance testified that Claimant was lined up to attend school from January 12 through January 14, 1993 in Salt Lake City. With his supervisor's approval, Claimant elected to travel by auto from Oroville, California to Salt Lake City (other members of the gang travelled to Salt Lake City via airplane).

Claimant spent the weekend (January 9 and 10) with friends in California and on Monday, January 11, he drove from Oroville towards Salt Lake City. Claimant had to stop at Wendover, Nevada, because a severe snow storm made the interstate highway impassable. Thus, Claimant could not reach Salt Lake City on Monday. Instead of waiting, he went west back to Elko, Nevada, which was his hometown. While the record is unclear, the interstate was apparently open periodically for eastbound traffic on Tuesday, January 12. In any event, Claimant decided to stay in Elko and help his folks weather the storm and he thus, did not attend the school.

According to Claimant, he tried to contact the Bridge Maintenance Manager on Tuesday, January 12. However, because he called from a pay telephone, Claimant could not prove that he made the call. The Manager of Bridge Maintenance denied receiving any message from Claimant on his answering machine. The Manager called Claimant at his parents' home on Thursday evening (January 14). Claimant, who was shoveling snow, told his mother to assure the Manager that he (Claimant) would call the Manager the next morning. Claimant inexplicably failed to call the Manager on Friday morning. He did, however, contact the Manager on Sunday morning to find out if the gang was ready to return to work the next day in Oroville. On Sunday, Claimant then drove from Elko to

Reno where he stopped for the night. He arrived at the work site in California at 10:00 a.m. (three hours late) on January 18, 1993.

The initial issue before this Board is what is the proper interpretation and application of the July 24, 1990 letter agreement amending Rule 20.

The Organization argues that the letter agreement was designed for employees who had obviously abandoned their job. The Organization further asserts that the letter agreement was not intended to be applied to employees, like Claimant, whose whereabouts were known to the Carrier.

The Carrier contends that the letter agreement is generally applicable to any employee who was absent from work and has not contacted the Carrier to mark off absent.

This Board concludes that the Carrier may use the letter agreement anytime an employee is absent from work for a reasonable period of time and fails to follow proper call-in procedures. However, nothing in the letter agreement relieves the Carrier of its burden of proving that an employee is absent without authority. The letter agreement merely provides for the termination of the seniority of an employee if the employee does not request a Rule 20 investigation within 30 days.

Therefore, when an employee timely requests a Rule 20 investigation, the Carrier must come forward with substantial evidence showing that the employee was absent without authority at the investigation. Put differently, the Rule 20 hearing proceeds like an ordinary Rule 20 hearing and the notice which the Carrier sent is treated like a notice of charges.

In summary, the Carrier could properly serve Claimant with a notice that he was absent without leave and that his seniority will be terminated pursuant to the letter

agreement. However, since Claimant requested a Rule 20 hearing, it was then incumbent upon the Carrier to prove that Claimant committed the charged offense.

At the investigation, the Carrier proved that Claimant was absent without authority for one-half day on January 12, and two full days on January 13 and 14, 1993 but not January 11, or the morning of January 12, 1993. The Manager of Bridge Maintenance acknowledged that Monday was a travel day for Claimant. The record is undisputed that weather conditions prevented Claimant from reaching Salt Lake City on the evening of Monday, January 11. The earliest Claimant could have reached Salt Lake City was late morning or noon on Tuesday. A severe snow storm is a proper justification for failing to come to work although Claimant should have contacted his supervisor. However, Claimant was absent without authority for the remaining two and one-half days of the school since he failed not only to contact his Supervisor but also he made no attempt to drive to Salt Lake City and the record contains insufficient evidence that the highway remained closed to traffic beyond January 11.

Indeed, Claimant aggravated his offense by improvidently ignoring the Manager's telephone call on Thursday evening. Claimant offered no explanation for not returning the Manager's call the next morning. This logically led the Manager to believe that Claimant was abandoning his job. As a Foreman, Claimant was acutely aware of the procedures for properly marking off absent.

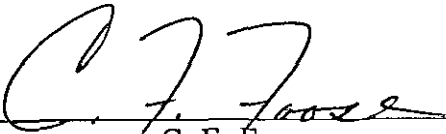
Inasmuch as the Carrier did not prove that Claimant was AWOL on January 11 and a portion of January 12 and in view of Claimant's good work record, this Board will reduce


the discipline to the time Claimant has spent out of service. The Carrier shall reinstate Claimant with his seniority unimpaired but without back pay.

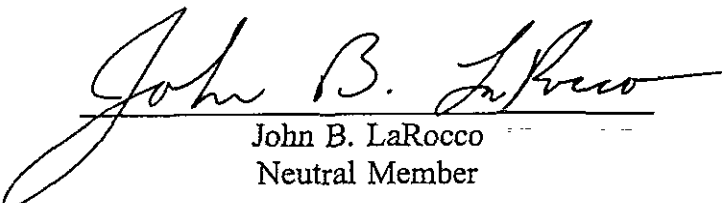
AWARD AND ORDER

Claim sustained to the extent consistent with our findings. The Carrier shall reinstate Claimant to service with his seniority unimpaired but without pay for time lost. The Carrier shall comply with this Award within 30 days of the date stated below.

Dated: March 2, 1995


C. F. Foose
Employees' Member


D. A. Ring
Carrier Member


John B. LaRocco
Neutral Member